

ARKANSAS SUPREME COURT

No. CR 08-14

WALTER A. McCULLOUGH
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 28, 2007

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
CRAIGHEAD COUNTY, WESTERN
DISTRICT, CR 2004-820, HON.
VICTOR L. HILL, JUDGE]

MOTION TREATED AS MOTION
FOR RULE ON CLERK AND
DENIED.

PER CURIAM

In 2005, a jury found petitioner Walter A. McCullough guilty of a terroristic act and first-degree battery and sentenced him to an aggregate term of 960 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *McCullough v. State*, CACR 05-1183 (Ark. App. 2006). Petitioner filed a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by the trial court in an order entered January 12, 2007. Petitioner filed a notice of appeal in the trial court on January 22, 2007.

Petitioner has filed in this court a motion for belated appeal requesting that we allow him to proceed with the appeal. As the notice of appeal was timely, we will treat the motion as a motion for rule on clerk to lodge the record. *See Ray v. State*, 348 Ark. 304, 73 S.W.3d 594 (2002). The time limit set in Ark. R. App. P.--Civ. 5(a), as applied through Ark. R. App. P.--Crim. 4(a), requires that the record must be tendered to this court within ninety days of the date of the notice of appeal, unless

the circuit court granted an extension of time. Here, no record was tendered to our clerk, other than the partial record tendered on January 7, 2008, in conjunction with this motion.

In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for rule on clerk and motions for belated appeal. We said that there are only two possible reasons for an appeal not to be timely, either the party or attorney filing the appeal is at fault or there is good reason. *Id.* at 116, 146 S.W.3d 891. If the party believes there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present. *Id.*

Petitioner argues that the circuit clerk and trial court should be responsible to timely file the record. It is not, however, the duty of the circuit clerk, or the responsibility of anyone other than the petitioner, to perfect an appeal. *See Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam); *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure. *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam). *See also Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam).

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). Because petitioner has stated no good cause for the failure to comply with our rules and timely lodge the record, we deny his motion.

Motion treated as motion for rule on clerk and denied.